

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael E. LaSalle

Group Art Unit: 3721

Serial No.: 10/779,960

Examiner: Christopher R. Harmon

Filed: February 17, 2004

Attorney Docket: STG-001

Title: Methods and Apparatus for Fabricating, Handling and
Transporting Elongate Bags of Material

Commissioner for Patents
Alexandria, VA 22313

Sir:

APPLICANT'S BRIEF ON APPEAL

On November 28, 2007, the Examiner finally rejected claims 3-29 and 36-37 of the present application. On February 28, 2008, the Applicant filed a Notice of Appeal (with fee) appealing the final rejection of claims 3-29 and 36-37. The present Brief on Appeal (with fee) is therefore timely. If any additional fee is due, please charge the fee to deposit account no. 07-1732.

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I. Real Party in Interest

The real party in interest is Certain Teed Corporation, the assignee of the present application.

II. Related Appeals and Interferences

There are no other appeals or interferences which are related to this application or this appeal.

III. Status of the Claims

This application was originally filed with claims 1-29. In an amendment filed September 28, 2005, Claims 1-2 were cancelled and claims 30-35 were added. In an amendment filed on May 8, 2006, claims 30-35 were cancelled and claims 36-37 were added. Claims 3-29 and 36-37 stand finally rejected. The final rejection of claims 3-29 and 36-37 was appealed on February 28, 2008. Applicant has filed concurrently herewith an amendment pursuant to 37 CFR §41.33(b). In this amendment, claims 12 and 25 are written in independent form. Claims 3-11, 15-24, 28-29 and 36-37 are cancelled. Such amendment cancels claims and rewrites dependent claims into independent form and thus should be entered under 37 CFR §41.33(b). The remaining claims 12-14 and 25-27 are the claims on appeal.

IV. Status of Amendments

On February 28, 2008, Applicant filed an amendment to the claims that was not entered by the Examiner.

In a paper filed concurrently herewith, Applicant has filed an amendment pursuant to 37 CFR §41.33(b). In this amendment, claims 12 and 25 are written in independent form. Claims 3-11, 15-24, 28-29 and 36-37 are cancelled. Such amendment cancels claims and rewrites dependent claims into independent form and thus should be entered under 37 CFR §41.33(b). Please refer to the Claims Appendix for the claims on appeal.

V. Summary of the Claimed Subject Matter

Independent claim 12 is directed to a method of handling material comprising packaging material into elongate bags (Block B20 of FIG. 2 and page 7, lines 7-17) and automatically arranging the elongate bags into groups (Block B30 of FIG. 2 and page 7, lines 19-20). At least one of these groups has a cross-stacked configuration wherein a first set of bags are disposed side-by-side along their lengths and at least one additional bag is disposed orthogonal to and adjacent said first set of bags (FIGS. 3 and 4 and page 7, line 20 to page 8, line 5). The groups of elongate bags are automatically lifted and transported, group by group, to form a multi-row stack of elongate bags. (Block B40 of FIG. 2 and page 8, lines 10-14). The lifting and transporting is accomplished by a stacker machine (FIG. 3) that applies opposed clamping forces to opposite sides of at least one group having a cross-stacked configuration while preventing elongate bags disposed side-by-side in the cross-stacked configuration from sliding past one another (FIG. 3 and page 8, line 16 to page 9, line 8). The opposed clamping forces are applied to only two sides of the at least one group and the opposed clamping forces alone being sufficient to lift the at least one group (page 8, lines 16 to 18). The stacker machine has a moveable stacker head (303 of FIG. 3) with two fingers (305A, 305B of FIG. 3) that apply opposed clamping forces to grip a given group of elongate bags and at least one support structure (307A, 307B in FIG. 3) that is operably disposed between bags disposed side-by-side in the cross-stacked configuration to prevent such bags from sliding past one another while not providing resistance to the opposed clamping forces (page 8, line 16 to page 9, line 8).

Dependent claim 13 recites that the support structure comprises at least one chain. This is described at page 8, line 21 through page 9, line 3.

Dependent claim 14 recites the support structure comprises one of wire strands and rope strands. This is described at page 9, lines 3-5.

Claims 25-27 are system claims of scope similar to methods claims 12-14 as summarized above.

VI. Grounds of Rejection to be Reviewed on Appeal

The issues on appeal are:

(1) whether the Examiner erred in rejecting claim 12 and 25 under 35 U.S.C. §103(a) as being obvious over Pagdin (2920916) in view of Tygard (5516255);

(2) whether the Examiner erred in rejecting claims 12 and 25 under 35 U.S.C. §103(a) as being obvious over Pagdin (2920916) in view of Seaberg (6135704) and Tygard (5516255); and

(3) whether the Examiner erred in rejecting claims 13-14 and 26-27 under 35 U.S.C. §103(a) as being obvious over Pagdin (2920916) in view of Tygard (5516255) and Applicants Admitted Prior Art and Milholen et al. (3,992,049).

VII. Argument

The Examiner's rejection of claims 12 and 25 under 35 U.S.C. §103(a) is improper because the combination of art cited by the Examiner was not predictable to one skilled in the art at the time of Applicant's invention. The Examiner's rejections of dependent claims 13-14 and 26-27 under 35 U.S.C. §103(a) are improper because the dependent claims include all of the non-obvious limitations of the independent claims 12 and 25, respectively, as well as additional features neither taught nor suggested by the cited art. As discussed below, the Examiner's rejections of all of Applicant's claims rest upon a plurality of references that fail to teach or suggest important limitations of the claims, instead teaching away from Applicant's invention.

A. The Examiner erred in rejecting claims 12 and 25 under 35 U.S.C. §103(a)

A.1. Patentability of Claims 12 and 25 over the combination of Pagdin and Tygard

Independent claim 12 recites, inter alia, "... a stacker machine having **a moveable stacker head with two fingers that apply opposing clamping forces to grip a given group of elongate bags and at least one support structure that is operably disposed between bags disposed side-by-side in said cross-stacked configuration to prevent such bags from sliding past one another while not providing resistance to the opposed clamping forces** (emphasis added)." Nowhere does the prior art teach or suggest these features.

In rejecting claim 12 over the combination of Pagdin and Tygard, the Examiner admits that Pagdin does not disclose applying opposed clamping forces to only two sides of a group but goes on to assert that Tygard employs a pair of clamping arms 30 and a central support bar 20 and also that only one pair of clamping arms 30 can accomplish the same task if desired. The Examiner's analysis is flawed as it fails to address important limitations of the claim.

More particularly, the at least one support structure of the claim **is operably disposed between bags disposed side-by-side in said cross-stacked configuration to prevent such bags from sliding past one another while not providing resistance to the opposed clamping forces.** The central support bar 20 of Pagdin is part of a frame that connects the pair of clamping arms 30. The central support bar 20 is disposed above the articles to be lifted and not between articles to be lifted as required in the claim. Moreover, the central support bar 20 does not and cannot carry out the function of the support structure of the claim, which "prevents bags from sliding past one another while not providing resistance to the opposed clamping forces." For these reasons, the Examiner's rejection of claim 12 over the combination of Pagdin and Tygard is clearly in error and should be overturned. Similar arguments apply to the Examiner's rejection of system claim 25 over the combination of Pagdin and Tygard.

A.2. Patentability of Claims 12 and 25 over the combination of Pagdin, Seaberg and Tygard

In rejecting claim 12 over the combination of Pagdin, Seaberg and Tygard, the Examiner points to the clamp and central core member described in Seaberg at col. 5, lines 54-60 as suggesting these features. The Examiner's analysis is flawed as it fails to address important limitations of the claim.

More particularly, the at least **one support structure of the claim** is “operably disposed between bags disposed side-by-side in said cross-stacked configuration to prevent such bags from sliding past one another **while not providing resistance to the opposed clamping forces**. In contrast, the central core member of Seaberg resists the inward clamping forces imposed by the clamp. Col. 5, lines 57-60. In this manner, the central core member contemplated by Seaberg does not and cannot carry out the function of the support structure of the claim, which “prevents bags from sliding past one another while not providing resistance to the opposed clamping forces.” Instead, it teaches away from such function.

Moreover, the clamp 39 of Seaberg employs four arms 40a-d that extend downward and form a substantially rectangular opening. Col. 3, lines 35-40. The present invention utilizes “opposed clamping forces being applied to only two sides of the at least one group [of elongate bags].” This configuration is simpler and less costly to design and use than the complex gripping apparatus of Seaberg.

For these reasons, the Examiner's rejection of claim 12 over the combination of Pagdin, Seaberg and Tygard is clearly in error and should be overturned. Similar arguments apply to the Examiner's rejection of system claim 25 over the combination of Pagdin, Seaberg and Tygard.

B. The Examiner erred in rejecting claims 13-14 and 26-27 under 35 U.S.C. §103(a)

B.I. Patentability of claims 13-14 and 26-27 over the combination of Pagdin, Tygard, AAPA and Milholen et al.

Claims 13-14 and 26-27 are patentable over the cited prior art for those reasons advanced above with respect to the independent claims 12 and 25 from which they respectively depend, and for reciting additional features that are neither taught nor suggested by the prior art. Specifically, claims 13 and 26 recite that the support structure is "at least one chain". Claims 14 and 27 recite that the support structure is "one of wire strands and rope strands." Nowhere does the cited prior art teach or suggest these features. The Examiner states that these features would be obvious to one of ordinary skill in the art. Such analysis is flawed as there is no factual basis underlying the Examiner's assertion. In order to make a prima facie obviousness rejection of the claims, the Examiner must show "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." In re Fritch, 23 U.S.P.Q.2d 1780 (Fed.

Cir. 1992) citing In re Fine, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) and In re Lalu, 223 U.S.P.Q. 1257 (Fed Cir. 1984). The Examiner has failed to make such required showings for claims 13-14 and 26-27. For these reasons, Applicant respectfully submits that the Examiner has failed to establish a prima facie rejection of claims 13, 14, 26 and 27.

In light of all of the above, it is submitted that the claims are in order for allowance, and the applicant respectfully requests that the Board direct the Examiner to allow the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jay P. Sbrollini". The signature is fluid and cursive, with a long horizontal stroke at the end.

Attorney for Applicant(s)
Jay P. Sbrollini
Reg. No. 36,266
Attorney for Applicant(s)

GORDON & JACOBSON, P.C.
60 Long Ridge Road
Suite 407
Stamford, CT 06902
voice: (203) 323-1800

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VIII. Claims Appendix

1 - 11 (cancelled)

12. A method of handling material comprising:

packaging material into elongate bags;

automatically arranging the elongate bags into groups, wherein at least one group has a cross-stacked configuration wherein a first set of bags are disposed side-by-side along their lengths and at least one additional bag is disposed orthogonal to and adjacent said first set of bags; and

automatically lifting and transporting said groups of elongate bags, group by group, to form a multi-row stack of elongate bags, said lifting and transporting accomplished by applying opposed clamping forces to opposite sides of at least one group having a cross-stacked configuration while preventing elongate bags disposed side-by-side in said cross-stacked configuration from sliding past one another, said opposed clamping forces being applied to only two sides of the at least one group and said opposed clamping forces alone being sufficient to lift the at least one group;

wherein said automatic lifting and transporting said groups of elongate bags is carried out by a stacker machine having a moveable stacker head with two fingers that apply opposed clamping forces to grip a given group of elongate bags and at least one support structure that is operably disposed between bags disposed side-by-side in said cross-stacked configuration to prevent such bags from sliding past one another while not providing resistance to the opposed clamping forces.

13. A method according to claim 12, wherein:

said support structure comprises at least one chain.

14. A method according to claim 12, wherein:

said support structure comprises one of wire strands and rope strands.

15 - 24 (cancelled)

25. A material handling system comprising:

means for packaging material into elongate bags;

means for automatically arranging the elongate bags into groups, wherein at least one group has a cross-stacked configuration wherein a first set of bags are disposed side-by-side along their lengths and at least one additional bag is disposed orthogonal to and adjacent said first set of bags; and

means for automatically lifting and transporting said groups of elongate bags, group by group, to form a multi-row stack of elongate bags, including means for applying opposed clamping forces to opposite sides of at least one group having a cross-stacked configuration while preventing elongate bags disposed side-by-side in said cross-stacked configuration from sliding past one another, said opposed clamping forces being applied to only two sides of the at least one group and said opposed clamping forces alone being sufficient to lift the at least one group;

wherein said means for automatically lifting and transporting said groups of elongate bags comprises a stacker machine having a moveable stacker head with two

fingers that apply opposing clamping forces to grip a given group of elongate bags and at least one support structure that is operably disposed between bags disposed side-by-side in said cross-stacked configuration to prevent such bags from sliding past one another while not providing resistance to the opposed clamping forces.

26. A material handling system according to claim 25, wherein:

said support structure comprises at least one chain.

27. A material handling system according to claim 25, wherein:

said support structure comprises one of wire strands and rope strands.

28 - 37 (cancelled)

IX. Evidence Appendix

None.

X. Related Proceedings Appendix

None.